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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 ANTHONY ERNST FAIN,

11 Petitioner,

12 v.

13 ROB McKENNA,

14 Respondent.

No. C10-5054 BHS/KLS

REPORT AND RECOMMENDATION

Noted for: April 2, 2010

15 This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28
16 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner is an inmate at the Washington State
17 Penitentiary. He has filed a petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 and
18 an application to proceed *in forma pauperis*. Dkt. 1. Because Petitioner appears to have
19 sufficient funds with which to pay the \$5.00 court filing fee, the undersigned recommends the
Court deny the application.

20 **DISCUSSION**

21 A district court may permit indigent litigants to proceed in forma pauperis upon
22 completion of a proper affidavit of indigency. See 28 U.S.C. §1915(a). However, the court has
23 broad discretion in denying an application to proceed in forma pauperis. *Weller v. Dickson*, 314
24 F.2d 598 (9th Cir. 1963), cert. denied, 375 U.S. 845 (1963).
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1 Several district courts have ruled that denial of *in forma pauperis* status is not
2 unreasonable when a prisoner is able to pay the initial expenses required to commence a lawsuit.
3 See *Temple v. Ellerthorpe*, 586 F.Supp. 848 (D.R.I. 1984); *Braden v. Estelle*, 428 F.Supp. 595
4 (S.D.Tex. 1977); *U.S. ex rel. Irons v. Com. of Pa.*, 407 F.Supp. 746 (M.D.Pa. 1976); *Shimabuku*
5 *v. Britton*, 357 F.Supp. 825 (D.Kan. 1973), *aff'd*, 503 F.2d 38 (10th Cir. 1974); *Ward v. Werner*,
6 61 F.R.D. 639 (M.D.Pa. 1974).

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8 By requesting the Court to proceed *in forma pauperis*, Petitioner is asking the
9 government to incur the filing fee because he allegedly is unable to afford the costs necessary to
10 proceed with his petition for *habeas corpus*. Petitioner's application reflects that he is now
11 employed at the Washington State Penitentiary earning \$35.00 per month, that he has average
12 monthly receipts of \$70.63 and an average spendable balance of \$116.38. Dkt. 1, p. 3. The
13 undersigned recognizes that the funds to which Petitioner has access may not be great. However,
14 given the fact that a prisoner's basic needs are provided for while he is incarcerated and the
15 minimal filing fee required to proceed with this action (\$5.00), it is not unreasonable to expect
16 Petitioner to pay that fee from those funds.

18 CONCLUSION

19 Because Petitioner appears to have sufficient funds to pay the filing fee, the undersigned
20 recommends that the Court deny his application to proceed *in forma pauperis*.

21 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure
22 ("Fed. R. Civ. P."), Petitioner shall have fourteen (14) days from service of this Report and
23 Recommendation to file written objections thereto. See also Fed. R. Civ. P. 6. Failure to file
24 objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474
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1 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed set
2 this matter for consideration on **April 2, 2010**, as noted in the caption.

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4 DATED this 8th day of March, 2010.

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8 Karen L. Strombom
9 United States Magistrate Judge
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